

AMENDED IN ASSEMBLY MARCH 26, 2004

AMENDED IN ASSEMBLY MARCH 22, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 1839**

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**Introduced by Assembly Member Montanez**

January 22, 2004

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An act to amend Sections 2982 and 2982.5 of, and to add Sections 1793.27 and 2982.2 to, the Civil Code, relating to consumers.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1839, as amended, Montanez. Motor vehicle sale contracts: cooling off period.

Existing law governs motor vehicle conditional sale contracts, as defined. These provisions require sellers of motor vehicles to make certain disclosures to buyers, including that existing law does not provide for a “cooling off” period, or an opportunity for a purchaser to cancel the contract for any reason within a specified time period, with respect to a conditional sale contract for the purchase of a motor vehicle. A violation of these provisions is a misdemeanor.

This bill would enact the Car Buyer’s Bill of Rights. The bill would provide that purchasers of used or preowned cars may cancel the motor vehicle sale contract prior to midnight of the 3rd business day after the buyer signs the agreement or offer to purchase under specified conditions and may obtain a refund from the seller, as defined. The bill would require the sale contract to contain a specified statement in that regard, and, as applicable to a new, used, and preowned motor vehicle sale contract, statements relating to credit scores and loans and

aftermarket items, as specified. Because a violation of these provisions would be a misdemeanor, the bill would create a new crime, thereby imposing a state-mandated local program.

This bill would also define a “certified” used or preowned motor vehicle and prohibit a dealer from advertising or selling that vehicle as “certified,” or as described using similar terms to imply that the seller has inspected the vehicle and has corrected any defects found, unless it comes within that definition and meets specified criteria.

Existing law prohibits the seller of a motor vehicle from providing any security or other guarantee of payment on a loan to finance the purchase or from receiving any commission or other remuneration for assisting the buyer to obtain the loan.

This bill would further prohibit the seller with respect to a car loan, conditional sales contract, or any other mode of vehicle purchase financing, from ~~arranging financing~~, accepting a commission, up-charge, dealer reserve, or similar compensation; *for arranging financing* or making a credit sale or similar transaction.

The bill would also set forth the intent of the Legislature.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. This act shall be known and may be cited as the
- 2 “Car Buyer’s Bill of Rights.”
- 3 SEC. 2. Section 1793.27 is added to the Civil Code, to read:
- 4 1793.27. (a) A dealer, as defined in subdivision (h) of
- 5 Section 1793.23, may not advertise or sell a used or preowned
- 6 motor vehicle as a “certified” used or “certified” preowned
- 7 motor vehicle, or any similar descriptive term that implies that the
- 8 seller has inspected the vehicle for defects and has corrected any
- 9 defects found, unless the motor vehicle satisfies the definition and
- 10 meets the criteria set forth in subdivision (c).



(b) In addition to any other remedies available under the law, the remedies set forth in Section 1794 shall apply to any violation of this section.

(c) For purposes of this section, a “certified” used or preowned motor vehicle means a used or preowned motor vehicle built to United States standards that has been inspected by a technician qualified to inspect for collision repair and mechanical condition prior to sale and that meets all of the following criteria:

(1) The motor vehicle has not sustained material damage, as defined in Section 9990 of the Vehicle Code.

(2) The odometer on the vehicle has not been rolled back.

(3) The vehicle has not been repurchased by a dealer or manufacturer pursuant to a state or federal warranty statute.

(4) The title to the vehicle has not been inscribed with the notation “Lemon Law Buyback,” “manufacturer repurchase,” “salvage,” “junk,” “nonrepairable,” “flood,” or similar designation.

(5) The vehicle had been certified by the original equipment manufacturer licensed as a vehicle manufacturer or distributor under California Law.

SEC. 3. Section 2982 of the Civil Code is amended to read:

2982. Every conditional sale contract subject to this chapter shall contain the disclosures required by Regulation Z, whether or not Regulation Z applies to the transaction. In addition, to the extent applicable, the contract shall contain the other disclosures and notices required by, and shall satisfy the requirements and limitations of, this section. The disclosures required by subdivision (a) may be itemized or subtotaled to a greater extent than as required by that subdivision, and shall be made together and in the sequence set forth in that subdivision. All other disclosures and notices may appear in the contract in any location or sequence and may be combined or interspersed with other provisions of the contract.

(a) The contract shall contain the following disclosures, as applicable, which shall be labeled “itemization of the amount financed”:

(1) (A) The cash price, exclusive of document preparation fees, taxes imposed on the sale, pollution control certification fees, prior credit or lease balance on property being traded in, and the amount charged for a service contract.

- 1 (B) The fee to be retained by the seller for document  
2 preparation.
- 3 (C) The fee charged by the seller for certifying that the motor  
4 vehicle complies with applicable pollution control requirements.
- 5 (D) Taxes imposed on the sale.
- 6 (E) The amount of any optional business partnership  
7 automation fee to register or transfer the vehicle, which shall be  
8 labeled "Optional DMV Electronic Filing Fee."
- 9 (F) The amount charged for a service contract.
- 10 (G) The prior credit or lease balance remaining on property  
11 being traded in, as required by paragraph (6). The disclosure  
12 required by this subparagraph shall be labeled "prior credit or  
13 lease balance (see downpayment and trade-in calculation)."
- 14 (H) Any charge for an optional debt cancellation agreement.
- 15 (I) The total cash price, which is the sum of subparagraphs (A)  
16 to (H), inclusive.
- 17 (2) Amounts paid to public officials for *all of* the following:
- 18 (A) Vehicle license fees.
- 19 (B) Registration, transfer, and titling fees.
- 20 (C) California tire fees imposed pursuant to Section 42885 of  
21 the Public Resources Code.
- 22 (3) The aggregate amount of premiums agreed, upon execution  
23 of the contract, to be paid for policies of insurance included in the  
24 contract, excluding the amount of any insurance premium  
25 included in the finance charge.
- 26 (4) The amount of the state fee for issuance of a certificate of  
27 compliance, noncompliance, exemption, or waiver pursuant to  
28 any applicable pollution control statute.
- 29 (5) A subtotal representing the sum of the foregoing items.
- 30 (6) The amount of the buyer's downpayment itemized to show  
31 *all of* the following, *as applicable*:
- 32 (A) The agreed value of the property being traded in.
- 33 (B) The prior credit or lease balance, if any, owing on the  
34 property being traded in.
- 35 (C) The net agreed value of the property being traded in, which  
36 is the difference between the amounts disclosed in subparagraphs  
37 (A) and (B). If the prior credit or lease balance of the property  
38 being traded in exceeds the agreed value of the property, a negative  
39 number shall be stated.



1 (D) The amount of any portion of the downpayment to be  
2 deferred until not later than the due date of the second regularly  
3 scheduled installment under the contract and which is not subject  
4 to a finance charge.

5 (E) The amount of any manufacturer's rebate applied or to be  
6 applied to the downpayment.

7 (F) The remaining amount paid or to be paid by the buyer as a  
8 downpayment.

9 (G) The total downpayment. If the sum of subparagraphs (C)  
10 to (F), inclusive, is zero or more, that sum shall be stated as the total  
11 downpayment and no amount shall be stated as the prior credit or  
12 lease balance under subparagraph (G) of paragraph (1). If the sum  
13 of subparagraphs (C) to (F), inclusive, is less than zero, then that  
14 sum, expressed as a positive number, shall be stated as the prior  
15 credit or lease balance under subparagraph (G) of paragraph (1),  
16 and zero shall be stated as the total downpayment. The disclosure  
17 required by this subparagraph shall be labeled "total  
18 downpayment" and shall contain a descriptor indicating that if the  
19 total downpayment is a negative number, a zero shall be disclosed  
20 as the total downpayment and a reference made that the remainder  
21 shall be included in the disclosure required pursuant to  
22 subparagraph (G) of paragraph (1).

23 (7) The amount of any administrative finance charge, labeled  
24 "prepaid finance charge."

25 (8) The difference between item (5) and the sum of items (6)  
26 and (7), labeled "amount financed."

27 (b) No particular terminology is required to disclose the items  
28 set forth in subdivision (a) except as expressly provided in that  
29 subdivision.

30 (c) If payment of all or a portion of the downpayment is to be  
31 deferred, the deferred payment shall be reflected in the payment  
32 schedule disclosed pursuant to Regulation Z.

33 (d) If the downpayment includes property being traded in, the  
34 contract shall contain a brief description of that property.

35 (e) The contract shall contain the names and addresses of all  
36 persons to whom the notice required under Section 2983.2 and  
37 permitted under Sections 2983.5 and 2984 is to be sent.

38 (f) (1) If the contract includes a finance charge determined on  
39 the precomputed basis, the contract shall identify the method of  
40 computing the unearned portion of the finance charge in the event

1 of prepayment in full of the buyer's obligation and contain a  
2 statement of the amount or method of computation of any charge  
3 that may be deducted from the amount of any unearned finance  
4 charge in computing the amount that will be credited to the  
5 obligation or refunded to the buyer. The method of computing the  
6 unearned portion of the finance charge shall be sufficiently  
7 identified with a reference to the actuarial method if the  
8 computation will be under that method. The method of computing  
9 the unearned portion of the finance charge shall be sufficiently  
10 identified with a reference to the Rule of 78's, the sum of the digits,  
11 or the sum of the periodic time balances method in all other cases,  
12 and those references shall be deemed to be equivalent for  
13 disclosure purposes.

14 (2) If the contract includes a finance charge which is  
15 determined on the simple-interest basis but provides for a  
16 minimum finance charge in the event of prepayment in full, the  
17 contract shall contain a statement of that fact and the amount of the  
18 minimum finance charge or its method of calculation.

19 (g) (1) If the contract includes a finance charge which is  
20 determined on the precomputed basis and provides that the  
21 unearned portion of the finance charge to be refunded upon full  
22 prepayment of the contract is to be determined by a method other  
23 than actuarial, the contract shall contain a notice, in at least  
24 10-point boldface type if the contract is printed, reading as  
25 follows: "Notice to buyer: (1) Do not sign this agreement before  
26 you read it or if it contains any blank spaces to be filled in. (2) You  
27 are entitled to a completely filled-in copy of this agreement. (3)  
28 You can prepay the full amount due under this agreement at any  
29 time and obtain a partial refund of the finance charge if it is \$1 or  
30 more. Because of the way the amount of this refund will be figured,  
31 the time when you prepay could increase the ultimate cost of credit  
32 under this agreement. (4) If you default in the performance of your  
33 obligations under this agreement, the vehicle may be repossessed  
34 and you may be subject to suit and liability for the unpaid  
35 indebtedness evidenced by this agreement."

36 (2) If the contract includes a finance charge which is  
37 determined on the precomputed basis and provides for the  
38 actuarial method for computing the unearned portion of the  
39 finance charge upon prepayment in full, the contract shall contain  
40 a notice, in at least 10-point boldface type if the contract is printed,

1 reading as follows: “Notice to buyer: (1) Do not sign this  
2 agreement before you read it or if it contains any blank spaces to  
3 be filled in. (2) You are entitled to a completely filled-in copy of  
4 this agreement. (3) You can prepay the full amount due under this  
5 agreement at any time and obtain a partial refund of the finance  
6 charge if it is \$1 or more. (4) If you default in the performance of  
7 your obligations under this agreement, the vehicle may be  
8 repossessed and you may be subject to suit and liability for the  
9 unpaid indebtedness evidenced by this agreement.”

10 (3) If the contract includes a finance charge which is  
11 determined on the simple-interest basis, the contract shall contain  
12 a notice, in at least 10-point boldface type if the contract is printed,  
13 reading as follows: “Notice to buyer: (1) Do not sign this  
14 agreement before you read it or if it contains any blank spaces to  
15 be filled in. (2) You are entitled to a completely filled-in copy of  
16 this agreement. (3) You can prepay the full amount due under this  
17 agreement at any time. (4) If you default in the performance of  
18 your obligations under this agreement, the vehicle may be  
19 repossessed and you may be subject to suit and liability for the  
20 unpaid indebtedness evidenced by this agreement.”

21 (h) The contract shall contain a notice in at least 8-point  
22 boldface type, acknowledged by the buyer, that reads as follows:  
23

24 “If you have a complaint concerning this sale, you should try  
25 to resolve it with the seller.

26 Complaints concerning unfair or deceptive practices or methods  
27 by the seller may be referred to the city attorney, the district  
28 attorney, or an investigator for the Department of Motor Vehicles,  
29 or any combination thereof.

30 After this contract is signed, the seller may not change the  
31 financing or payment terms unless you agree in writing to the  
32 change. You do not have to agree to any change, and it is an unfair  
33 or deceptive practice for the seller to make a unilateral change.  
34

35 \_\_\_\_\_  
36 Buyer’s Signature”  
37

38 (i) (1) The contract shall contain an itemization of any  
39 insurance included as part of the amount financed disclosed  
40 pursuant to paragraph (3) of subdivision (a) and of any insurance



1 included as part of the finance charge. The itemization shall  
2 identify the type of insurance coverage and the premium charged  
3 therefor, and, if the insurance expires before the date of the last  
4 scheduled installment included in the repayment schedule, the  
5 term of the insurance shall be stated.

6 (2) If any charge for insurance, other than for credit life or  
7 disability, is included in the contract balance and disbursement of  
8 any part thereof is to be made more than one year after the date of  
9 the conditional sale contract, any finance charge on the amount to  
10 be disbursed after one year shall be computed from the month the  
11 disbursement is to be made to the due date of the last installment  
12 under the conditional sale contract.

13 (j) (1) Except for contracts in which the finance charge or  
14 portion thereof is determined by the simple-interest basis and the  
15 amount financed disclosed pursuant to paragraph (8) of  
16 subdivision (a) is more than two thousand five hundred dollars  
17 (\$2,500), the dollar amount of the disclosed finance charge may  
18 not exceed the greater of:

19 (A) (i) One and one-half percent on so much of the unpaid  
20 balance as does not exceed two hundred twenty-five dollars  
21 (\$225),  $1\frac{1}{6}$  percent on so much of the unpaid balance in excess of  
22 two hundred twenty-five dollars (\$225) as does not exceed nine  
23 hundred dollars (\$900) and five-sixths of 1 percent on so much of  
24 the unpaid balance in excess of nine hundred dollars (\$900) as does  
25 not exceed two thousand five hundred dollars (\$2,500); or

26 (ii) One percent of the entire unpaid balance; multiplied in  
27 either case by the number of months (computed on the basis of a  
28 full month for any fractional month period in excess of 15 days)  
29 elapsing between the date of the contract and the due date of the  
30 last installment; or

31 (B) If the finance charge is determined by the precomputed  
32 basis, twenty-five dollars (\$25); or

33 (C) If the finance charge or a portion thereof is determined by  
34 the simple-interest basis:

35 (i) Twenty-five dollars (\$25) if the unpaid balance does not  
36 exceed one thousand dollars (\$1,000).

37 (ii) Fifty dollars (\$50) if the unpaid balance exceeds one  
38 thousand dollars (\$1,000) but does not exceed two thousand  
39 dollars (\$2,000).



(iii) Seventy-five dollars (\$75) if the unpaid balance exceeds two thousand dollars (\$2,000).

(2) The holder of the contract may not charge, collect, or receive a finance charge which exceeds the disclosed finance charge, except to the extent (A) caused by the holder's receipt of one or more payments under a contract which provides for determination of the finance charge or a portion thereof on the 365-day basis at a time or times other than as originally scheduled whether or not the parties enter into an agreement pursuant to Section 2982.3, (B) permitted by paragraph (2), (3), or (4) of subdivision (c) of Section 226.17 of Regulation Z, or (C) permitted by subdivisions (a) and (c) of Section 2982.8.

(3) If the finance charge or a portion thereof is determined by the simple-interest basis and the amount of the unpaid balance exceeds five thousand dollars (\$5,000), the holder of the contract may, in lieu of its right to a minimum finance charge under subparagraph (C) of paragraph (1), charge, receive, or collect on the date of the contract an administrative finance charge not to exceed seventy-five dollars (\$75), provided that the sum of the administrative finance charge and the portion of the finance charge determined by the simple-interest basis shall not exceed the maximum total finance charge permitted by subparagraph (A) of paragraph (1). Any administrative finance charge which is charged, received, or collected by a holder shall be deemed a finance charge earned on the date of the contract.

(4) If a contract provides for unequal or irregular payments, or payments on other than a monthly basis, the maximum finance charge shall be at the effective rate provided for in paragraph (1), having due regard for the schedule of installments.

(k) The contract may provide that for each installment in default for a period of not less than 10 days the buyer shall pay a delinquency charge in an amount not to exceed in the aggregate 5 percent of the delinquent installment, which amount may be collected only once on any installment regardless of the period during which it remains in default. Payments timely received by the seller under an extension or deferral agreement may not be subject to a delinquency charge unless the charge is permitted by Section 2982.3. The contract may provide for reasonable collection costs and fees in the event of delinquency.

(l) Notwithstanding any provision of a contract to the contrary, the buyer may pay at any time before maturity the entire indebtedness evidenced by the contract without penalty. In the event of prepayment in full, *all of the following apply, as applicable*:

(1) If the finance charge was determined on the precomputed basis, the amount required to prepay the contract shall be the outstanding contract balance as of that date, provided, however, that the buyer shall be entitled to a refund credit in the amount of the unearned portion of the finance charge, except as provided in paragraphs (3) and (4). The amount of the unearned portion of the finance charge shall be at least as great a proportion of the finance charge, including any additional finance charge imposed pursuant to Section 2982.8 or other additional charge imposed because the contract has been extended, deferred, or refinanced, as the sum of the periodic monthly time balances payable more than 15 days after the date of prepayment bears to the sum of all the periodic monthly time balances under the schedule of installments in the contract or, if the contract has been extended, deferred, or refinanced, as so extended, deferred, or refinanced. If the amount of the refund credit is less than one dollar (\$1), no refund credit need be made by the holder. Any refund credit may be made in cash or credited to the outstanding obligations of the buyer under the contract.

(2) If the finance charge or a portion thereof was determined on the simple-interest basis, the amount required to prepay the contract shall be the outstanding contract balance as of that date, including any earned finance charges which are unpaid as of that date and, if applicable, the amount provided in paragraph (3), and provided further that in cases where a finance charge is determined on the 360-day basis, the payments theretofore received will be assumed to have been received on their respective due dates regardless of the actual dates on which the payments were received.

(3) Where the minimum finance charge provided by subparagraph (B) or subparagraph (C) of paragraph (1) of subdivision (j), if either is applicable, is greater than the earned finance charge as of the date of prepayment, the holder shall be additionally entitled to the difference.

1 (4) The provisions of this subdivision may not impair the right  
2 of the seller or the seller's assignee to receive delinquency charges  
3 on delinquent installments and reasonable costs and fees as  
4 provided in subdivision (k) or extension or deferral agreement  
5 charges as provided in Section 2982.3.

6 (5) Notwithstanding any provision of a contract to the contrary,  
7 whenever the indebtedness created by any contract is satisfied  
8 prior to its maturity through surrender of the motor vehicle,  
9 repossession of the motor vehicle, redemption of the motor vehicle  
10 after repossession, or any judgment, the outstanding obligation of  
11 the buyer shall be determined as provided in paragraph (1) or (2).  
12 Notwithstanding, the buyer's outstanding obligation shall be  
13 computed by the holder as of the date the holder recovers the value  
14 of the motor vehicle through disposition thereof or judgment is  
15 entered or, if the holder elects to keep the motor vehicle in  
16 satisfaction of the buyer's indebtedness, as of the date the holder  
17 takes possession of the motor vehicle.

18 (m) Notwithstanding any other provision of this chapter to the  
19 contrary, any information required to be disclosed in a conditional  
20 sale contract under this chapter may be disclosed in any manner,  
21 method, or terminology required or permitted under Regulation Z,  
22 as in effect at the time that disclosure is made, except that permitted  
23 by paragraph (2) of subdivision (c) of Section 226.18 of  
24 Regulation Z, provided that all of the requirements and limitations  
25 set forth in subdivision (a) of this section are satisfied. This chapter  
26 does not prohibit the disclosure in that contract of additional  
27 information required or permitted under Regulation Z, as in effect  
28 at the time that disclosure is made.

29 (n) If the seller imposes a fee for document preparation, the  
30 contract shall contain a disclosure that the fee is not a  
31 governmental fee.

32 (o) A seller may not impose an application fee for a transaction  
33 governed by this chapter.

34 (p) The seller or holder may charge and collect a fee not to  
35 exceed fifteen dollars (\$15) for the return by a depository  
36 institution of a dishonored check, negotiated order of withdrawal,  
37 or share draft issued in connection with the contract, if the contract  
38 so provides or if the contract contains a generalized statement that  
39 the buyer may be liable for collection costs incurred in connection  
40 with the contract.

(q) The contract shall disclose on its face, by printing the word “new” or “used” within a box outlined in red, that is not smaller than one-half inch high and one-half inch wide, whether the vehicle is sold as a new vehicle, as defined in Section 430 of the Vehicle Code, or a used vehicle, as defined in Section 665 of the Vehicle Code.

(r) The contract shall contain a notice with a heading in at least 12-point bold type and the text in at least 10-point bold type, circumscribed by a line, immediately above the contract signature line, that reads as follows:

**THERE IS NO COOLING OFF PERIOD  
FOR SALES OF NEW VEHICLES**

California law does not provide for a “cooling off” or other cancellation period for sales of new vehicles. Therefore, you cannot later cancel this contract simply because you change your mind, decide the vehicle costs too much, or wish you had acquired a different vehicle. After you sign below, you may only cancel this contract with the agreement of the seller or for legal cause, such as fraud.

SEC. 4. Section 2982.2 is added to the Civil Code, to read:

2982.2. (a) Notwithstanding Section 2982 or any other provision of law, the buyer of any used or preowned motor vehicle has the right to cancel a motor vehicle sale contract, including a conditional sale contract as defined in Section 2982, until midnight of the third business day after the day on which the buyer signs an agreement or offer to purchase.

(1) Cancellation occurs when the buyer gives written notice of cancellation to the seller at the address specified in the contract. To complete the cancellation, the buyer must return the motor vehicle, in substantially as good condition as when received, to the seller at the seller’s place of business within 24 hours of providing written notice of termination. A used motor vehicle that is returned with damage sustained as a result of a defect existing at the time of sale shall be deemed to be “in substantially as good condition as when received” for the purposes of this section.

(2) Notice of cancellation, if given by mail, is effective when deposited in the mail properly addressed with postage prepaid.

(3) Notice of cancellation given by the buyer need not take any particular form, as long as it is written, and, however expressed, is effective if it indicates the intention of the buyer not to be bound by the motor vehicle conditional sale contract.

(b) Upon completion of cancellation of the contract, the buyer is entitled to a full refund from the seller minus a reasonable offset for mileage added to the odometer after purchase. “A reasonable offset for mileage added to the odometer after purchase” means the sum of the purchase price of the motor vehicle, divided by 120,000 miles, multiplied by the number of miles added to the odometer after purchase.

(c) A motor vehicle sale contract, including a conditional sale contract, for the sale of a used or preowned motor vehicle shall contain in immediate proximity to the space reserved for the buyer’s signature, a conspicuous statement, written in the same language as that principally used in the oral sales presentation, in a size equal to at least 10-point boldface type, reading as follows: “You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction by providing written notice of cancellation to the seller at \_\_\_\_\_ [seller’s address]. Notice of cancellation, if given by mail, is effective when deposited in the mail properly addressed with postage prepaid. The notice of cancellation need not take any particular form, as long as it is written and it indicates your intention to cancel this transaction. You must complete the cancellation by returning the car, in substantially as good condition as when received, to the seller at \_\_\_\_\_ [seller’s place of business] within 24 hours of providing written notice that you intend to cancel this transaction.”

(d) If the seller of a motor vehicle arranges a loan for the buyer, the seller shall disclose the buyer’s credit score, as defined in Section 1785.15.1, and the lowest interest rate from the lender for which the buyer qualifies. The seller shall include this disclosure in the contract, written in the same language as that used in the contract, in at least 10-point boldface type, reading as follows: “Notice to buyer: (1) Your credit score, as calculated by \_\_\_\_\_, is \_\_\_\_\_. (2) The lowest interest rate from the lender for which you qualify is \_\_\_\_\_%.” The seller may not charge the buyer for

1 arranging the loan and is prohibited from accepting an up-charge,  
2 dealer reserve, or any other commission, payment, or  
3 compensation for arranging the loan.

4 (e) If the seller of a motor vehicle arranges a loan for the buyer  
5 and the purchase or lease includes the sale of aftermarket items,  
6 such as an extended warranty, a service contract, fabric protection,  
7 an alarm, or a vehicle theft product, the seller shall disclose in the  
8 contract, written in the same language as that used in the contract,  
9 in at least 10-point boldface type, reading as follows: “Notice to  
10 the buyer: (1) You have agreed to purchase the following  
11 aftermarket item: \_\_\_\_\_. (2) The cash price of this item is \$\_\_\_\_\_.  
12 (3) The actual monthly cost to the buyer for this item is:  
13 \$\_\_\_\_\_/month. (4) The total cost for this item is: \$\_\_\_\_\_.”

14 (f) For the purposes of this section, “seller” means a person  
15 engaged in the business of selling or leasing motor vehicles under  
16 any motor vehicle sale contract, including a conditional sale  
17 contract. “Seller” does not include a private individual who is not  
18 required to be licensed to sell vehicles in California.

19 SEC. 5. Section 2982.5 of the Civil Code is amended to read:

20 2982.5. (a) This chapter may not be deemed to affect a loan,  
21 or the security therefor, between a purchaser of a motor vehicle and  
22 a supervised financial organization, other than the seller of the  
23 motor vehicle, all or a portion of which loan is used in connection  
24 with the purchase of a motor vehicle. As used in this chapter,  
25 “supervised financial organization” means a person organized,  
26 chartered, or holding a license or authorization certificate under a  
27 law of this state or the United States to make loans and subject to  
28 supervision by an official or agency of this state or the United  
29 States.

30 (b) This chapter may not be deemed to prohibit the seller’s  
31 assisting the buyer in obtaining a loan upon any security from any  
32 third party to be used as a part or all of the downpayment or any  
33 other payment on a conditional sale contract or purchase order;  
34 provided that the conditional sale contract sets forth on its face the  
35 amount of the loan, the finance charge, the total thereof, the  
36 number of installments scheduled to repay the loan and the amount  
37 of each installment, that the buyer may be required to pledge  
38 security for the loan, which security shall be mutually agreed to by  
39 the buyer and the lender and notice to the buyer in at least 8-point  
40 type that he or she is obligated for the installment payments on both

1 the conditional sale contract and the loan. The seller may not  
2 provide any security or other guarantee of payment on the loan, nor  
3 shall the seller receive any commission or other remuneration for  
4 assisting the buyer to obtain the loan. If the buyer obligates himself  
5 or herself to purchase, or receives possession of, the motor vehicle  
6 prior to securing the loan, and if the buyer upon appropriate  
7 application for the loan is unable to secure the loan, on the  
8 conditions stated in the conditional sale contract, the conditional  
9 sale contract or purchase order shall be deemed rescinded and all  
10 consideration thereupon shall be returned by the respective parties  
11 without demand.

12 (c) The proceeds of any loan payable to the seller after the date  
13 of the contract but prior to the due date of the second payment  
14 otherwise scheduled thereunder may not be subject to a finance  
15 charge and the amount thereof shall be disclosed pursuant to  
16 subparagraph (D) of paragraph (6) of subdivision (a) of Section  
17 2982.

18 (d) This chapter may not be deemed to prohibit the seller's  
19 assisting the buyer in obtaining a loan from any third party to be  
20 used to pay for the full purchase price, or any part thereof, of a  
21 motor vehicle, if each of the following provisions applies:

22 (1) The loan may be upon any security, but except as provided  
23 in paragraph (2), the loan may not be secured in whole or in part  
24 by a lien on real property. Any lien on real property taken in  
25 violation of this section shall be void and unenforceable.

26 (2) A lien on real property may be taken to secure a loan of  
27 seven thousand five hundred dollars (\$7,500) or more used to pay  
28 the full purchase price, or any part thereof, of a recreational  
29 vehicle, as defined in Section 18010 of the Health and Safety  
30 Code, which is not less than 20 feet in length.

31 (3) The provisions of Sections 2983.2, 2983.3, and 2984.4  
32 shall apply to the loan, but may not authorize the lender or the  
33 lender's successor in interest to charge for any costs, fees, or  
34 expenses or to obtain any other benefit which the lender is  
35 prohibited from charging or obtaining under any regulatory law  
36 applicable to the lender. Notwithstanding this paragraph, the  
37 provisions of Sections 2983.2 and 2983.3 may not apply to a loan  
38 made by a lender licensed under Division 9 (commencing with  
39 Section 22000) or Division 10 (commencing with Section 24000)  
40 of the Financial Code.



1 (4) The lender or the lender's successor in interest shall be  
2 subject to all claims and defenses which the buyer could assert  
3 against the seller, but liability may not exceed the amount of the  
4 loan.

5 (5) If the buyer becomes obligated to purchase, or receives  
6 possession of, the motor vehicle prior to obtaining the loan, the  
7 agreement between the buyer and the seller shall set forth on its  
8 face the amount of the loan, the finance charge, the total thereof,  
9 the number of installments scheduled to repay the loan and the  
10 amount of each installment, that the buyer may be required to  
11 pledge security for the loan, which security must be mutually  
12 agreed to by the buyer and the lender, and notice to the buyer in at  
13 least 8-point type that the buyer is obligated for the installment  
14 payments on the loan and for any payments which may be due on  
15 the agreement between the buyer and the seller. The seller may not  
16 provide any security or other guarantee of payment on the loan,  
17 and the seller may not receive any commission, up-charge, dealer  
18 reserve, or other remuneration for assisting the buyer to obtain the  
19 loan or for arranging financing or making a credit sale or similar  
20 transaction. If the buyer upon proper application for the loan is  
21 unable to obtain the loan, on the condition stated in the agreement  
22 between the buyer and the seller, the agreement shall be deemed  
23 rescinded and all consideration thereupon shall be returned by the  
24 respective parties without demand.

25 (6) Any waiver by the buyer of the provisions of this section  
26 shall be void and unenforceable.

27 This subdivision does not apply to state or federally chartered  
28 banks and savings and loan associations and may not be construed  
29 to affect existing law regarding a seller's assisting a buyer to obtain  
30 a loan from a bank or savings and loan association or any loan  
31 obtained by the buyer from those lenders.

32 SEC. 6. It is the intent of this act, among other things, to  
33 prohibit the practices upheld by the Court of Appeal in *Kunert v.*  
34 *Mission Financial Services Corp.* (2003) 110 Cal.App.4th 242 or  
35 any similar practice.

36 SEC. 7. No reimbursement is required by this act pursuant to  
37 Section 6 of Article XIII B of the California Constitution because  
38 the only costs that may be incurred by a local agency or school  
39 district will be incurred because this act creates a new crime or  
40 infraction, eliminates a crime or infraction, or changes the penalty

1 for a crime or infraction, within the meaning of Section 17556 of  
2 the Government Code, or changes the definition of a crime within  
3 the meaning of Section 6 of Article XIII B of the California  
4 Constitution.

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